

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:
MARILYN RAYMOND
Petitioner

Marilyn Raymond

For the Petition

Lynn McCreary

Department of Housing and
Community Affairs

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Board of Appeals Case No. S-2826
(OZAH Case No. 12-15)

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2826, filed on September 14, 2011, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the cellar¹ of an existing single-family home located at 5115 Westridge Road in Bethesda, Maryland, on land in the R-60 (Residential, One-family, Detached) Zone. The property's legal description is Lot 31, Block 3 of the Westhaven Subdivision of Bethesda. The tax account number is 00661117.

The Hearing was scheduled for March 8, 2012, by notice dated October 5, 2011 (Exhibit 11). Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued October 18, 2011, recommended approval of the special exception, with conditions. Exhibit 14.²

The Department of Housing and Community Affairs (DHCA) inspected the property on February 6, 2012. Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated February 7, 2012 (Exhibit 12). The inspector concluded that occupancy must be limited to one person, in habitable space of 216 square feet.

A public hearing was convened on March 8, 2012, as scheduled, and Petitioner Marilyn Raymond appeared *pro se*. Also testifying was Inspector Lynn McCreary of the Department of Housing and Community Affairs. Petitioner executed an affidavit of posting (Exhibit 16), and the witnesses identified photos taken by Technical Staff, the Petitioner and the Housing Code Inspector. Petitioner adopted the findings in the Technical Staff Report (Exhibit 14) and in the Housing Code Inspector's Report (Exhibit 12), as Petitioner's own evidence (Tr. 9-10). She also agreed to meet all the conditions set forth in both reports. Tr. 10.

¹ Technical Staff referred to the location as the basement of the home; however, the Housing Code Inspector referred to the location as the cellar. Exhibit 12.

² The Technical Staff report is frequently quoted and paraphrased herein. Though dated October 18, 2011, it was not physically filed with the Office of Zoning and Administrative Hearings (OZAH) until March 6, 2012. Since page numbers were not included in the Staff report, the Hearing Examiner has added them by hand for ease of reference.

The record was held open till March 23, 2012, as required by Board Rule 7.2.6, because of the late filing of the Technical Staff report, and to await the filing by Petitioner of a copy of the deed and a revised landscape and lighting plan. While the record was open, Petitioner submitted copies of her deeds (Exhibits 17(a) and 18(a))³ and revised Landscape and Lighting Plans (Exhibit 18(b) and (c)). Technical Staff approved the revised plans on March 14, 2012 (Exhibit 19). On March 15, 2012, Petitioner submitted a statement requested by the Hearing Examiner, signed by Petitioner as Trustee of the Marilyn M. Raymond Family Trust, indicating that she consents to Marilyn M. Raymond, as an individual, obtaining the subject special exception on the site, and stating that she agrees to be bound by the conditions of the special exception.⁴ Exhibit 22. No further comments were filed. The record closed, as scheduled, on March 23, 2012.

There is no opposition to this special exception, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions.

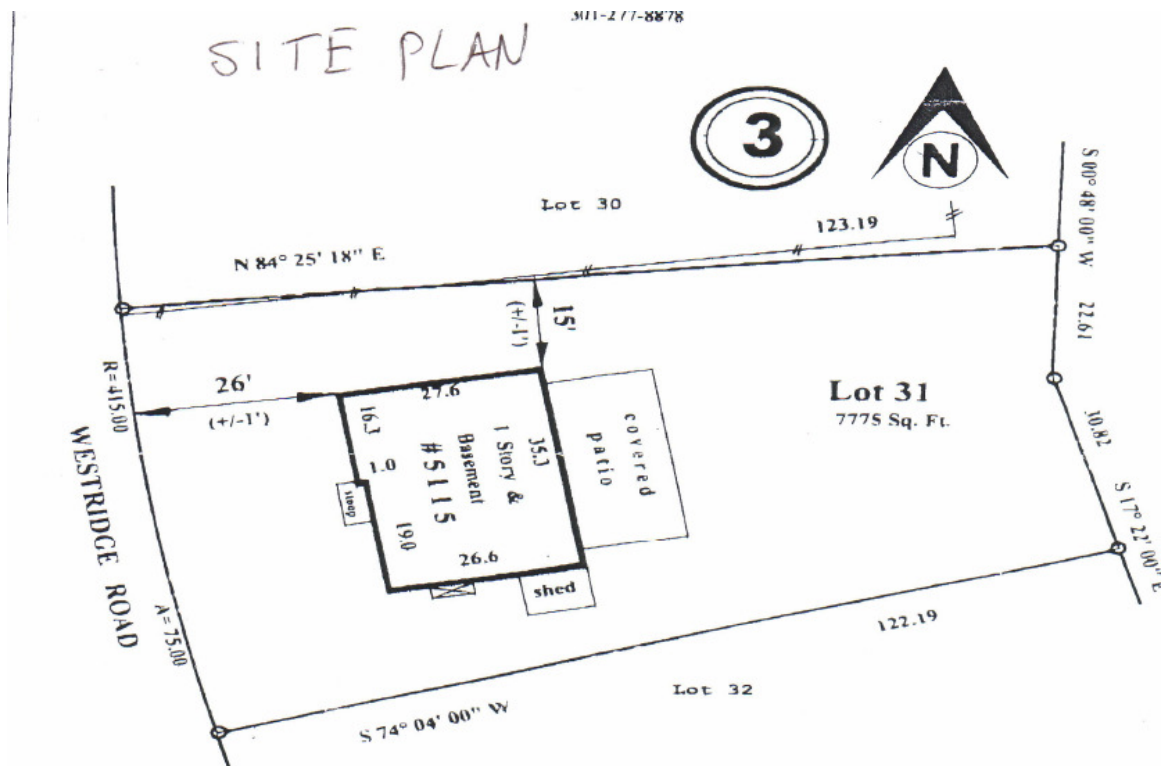
II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 5115 Westridge Road in Bethesda, Maryland in the Westhaven Subdivision, about 600 feet north of Baltimore Road. The home on a 7,775 square-foot, almost rectangular lot, as depicted in the site plan (Exhibit 3), reproduced on the next page.

³ The first deed submitted by Petitioner is dated December 5, 2011 (Exhibit 17(a)), which is less than a year ago. It reflects a transfer of the property from Petitioner, as an individual, back to herself as sole trustee of the Marilyn M. Raymond Family Trust. The Hearing Examiner therefore asked Petitioner to submit the deed reflecting Petitioner's initial acquisition of the property. The second deed (Exhibit 18(a)) demonstrates that Petitioner has owned the property since July 5, 2001. Given the nature of the second transfer, the Hearing Examiner finds that Petitioner, individually and as trustee, remains the owner of the property for purposes of this review, and she does not run afoul of the one-year ownership provision of Zoning Ordinance §59-G-2.00(b)(2). The Hearing Examiner believes that this provision was intended to prevent short-term owners from establishing accessory apartments, and this Petitioner has owned and lived in the property for over ten years. This sort of transfer, which leaves Petitioner in total control of the property, should therefore not result in an impediment to granting a special exception; however, to ensure that both the Petitioner, as trustee, and the Petitioner as an individual, are bound by the conditions of the special exception, a condition to this effect is recommended in Part V of this report. See also footnote 4, below.

⁴ The Hearing Examiner requested this statement from Petitioner, acting as trustee, to ensure that Petitioner, as an individual, has the "legal right to prosecute the petition," as required by Code §59-A-4.22(a)(6).



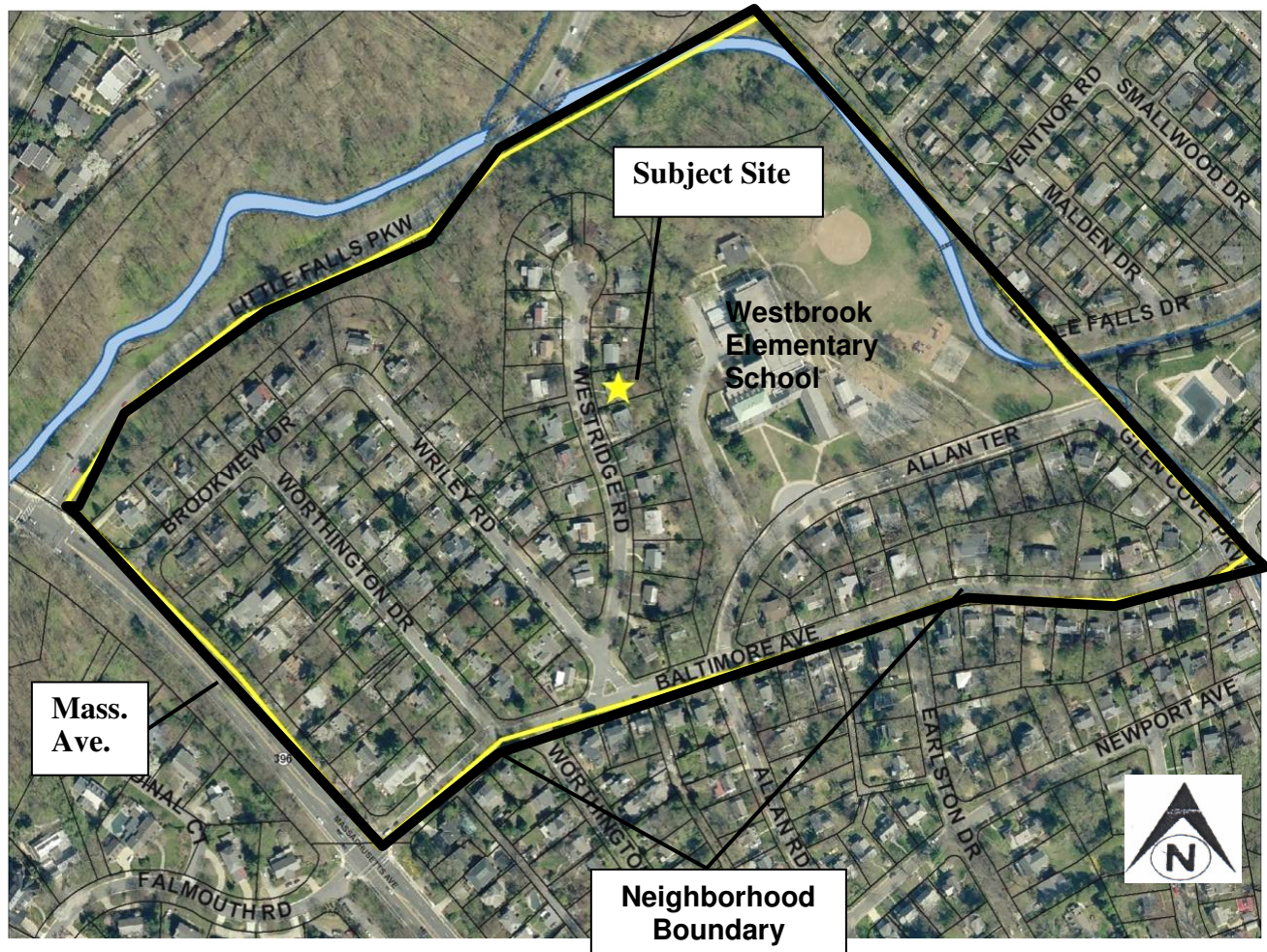
Technical Staff described the property as follows (Exhibit 14, p. 3):

The existing one-story house, constructed in 1951, contains 1516 square feet above ground and has a basement. The house is sits back 26' feet from the edge of Westridge Road. The front of the lot is flat with increasing slopes in the backyard. There is a backyard patio, lawn and garden beds. There is no driveway or parking on site so all parking will be on Westridge Road.

The front and rear of the home can be seen in the following photographs from the Technical Staff report (Exhibit 14, p. 4):



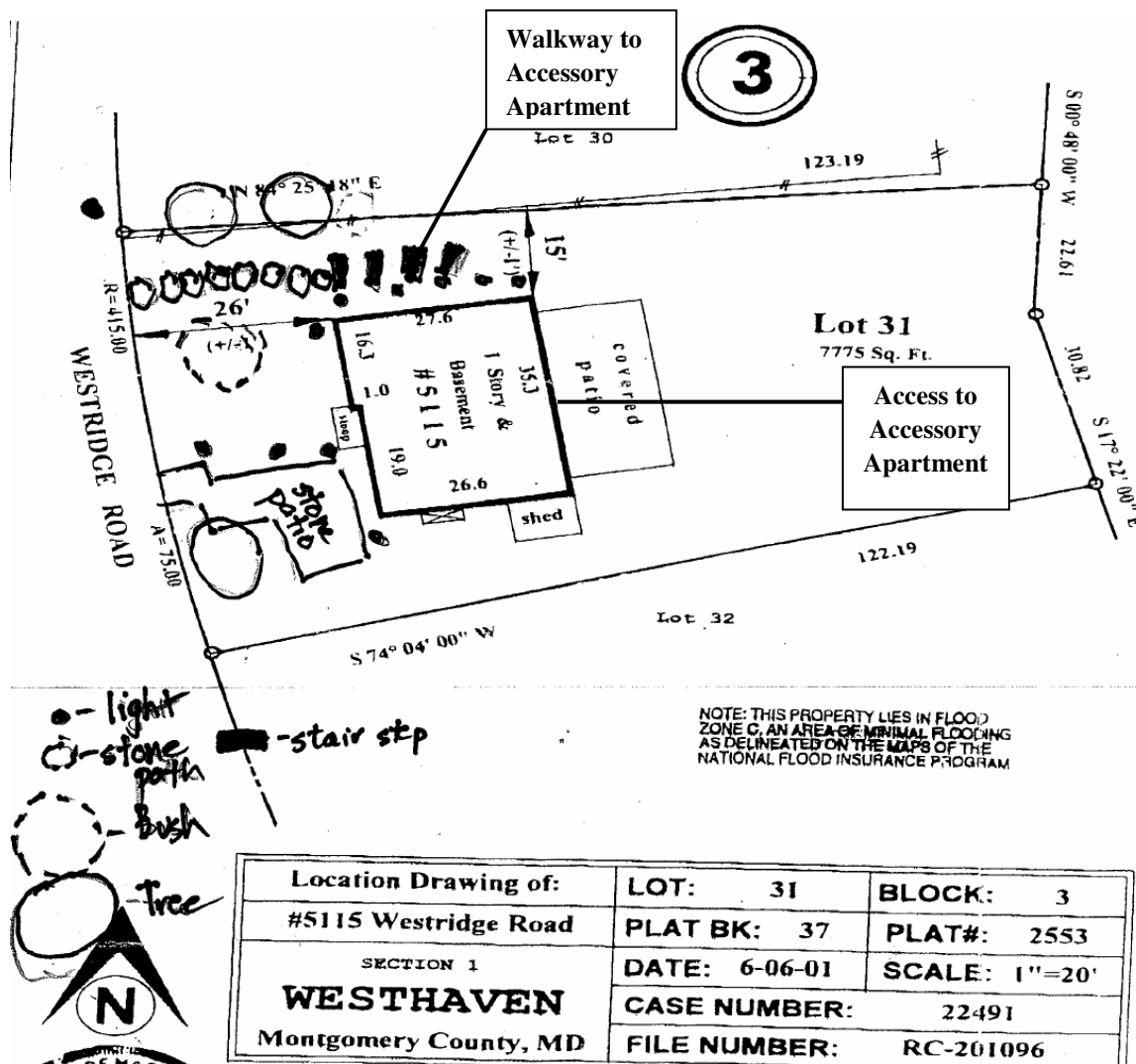
Technical Staff defined the general neighborhood as bounded by Little Falls Parkway to the north, the eastern property line of Westbrook Elementary School to the east, Baltimore Avenue to the south, and Massachusetts Avenue to the west. Exhibit 14, p. 5. The Hearing Examiner accepts this neighborhood definition, and it is shown below on a Map supplied by Technical Staff (Exhibit 14, p. 5):



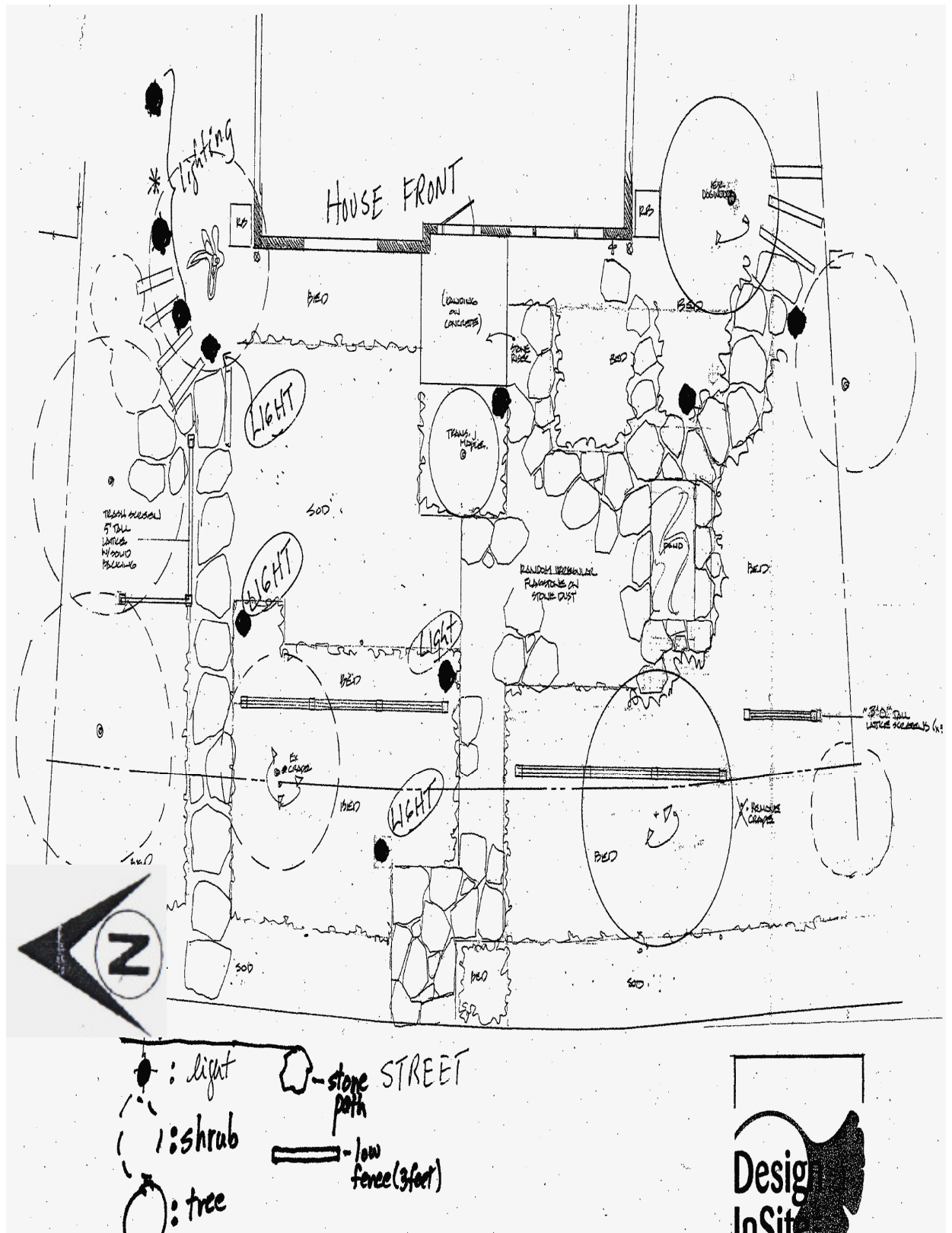
According to Technical Staff, all homes in the neighborhood are one-family detached homes, and the entire neighborhood is zoned R-60. There are two other special exceptions in the defined neighborhood. One is an accessory apartment at 5112 Baltimore Avenue, granted in 1987, and the other is located at 5122 Baltimore Avenue, granted in 1986. Staff concluded that the number of special exceptions is not excessive for the neighborhood. Exhibit 14, p. 5.

B. The Proposed Use

The Petitioner is seeking a special exception to allow a 408 square-foot accessory apartment in the cellar of her existing home. The apartment entrance is on the rear (east side) of the home, as shown in the revised Landscape and Lighting Plan (Exhibit 18(b)), reproduced below:



No external changes are planned as a result of the special exception; however, the landscaping in the front of the house is currently being redone (Tr. 13), and the plan for this revision (Exhibit 18(c)) is reproduced on the next page:



Photos taken by the Housing Code Inspector show the access to the accessory apartment from the rear covered patio (Exhibit 12(a)(9)) and the lighted walkway on the north side of the home by which it is reached (Exhibit 12(a)(4)):



As noted by Technical Staff, the accessory apartment entrance is clearly distinct from the entrance to the main dwelling, as the main dwelling's entrance is located in the front of the home, along Westridge Road. Staff concluded that the accessory apartment entrance does not detract from the appearance of the neighborhood, and described the pathway and lighting as follows (Exhibit 14, p. 3):

Adequate lighting, residential in character, is located to the left of the main entry to the home. There is a light pole close to the street casting light to guide the tenants to the walkway. However, there is a small gap in the walkway where the tenant will turn from the main path to the side path. It appears that the existing light pole and ground lights will be enough to provide enough lighting for the tenant to find the side path if the lighting is maintained.

Technical Staff described the property's landscaping as "well-maintained" and "within the standards expected for a typical one-family home." Exhibit 14, p. 7. Staff also indicated that there are no wetlands, specimen trees, forest or other sensitive features on the site, and "There are no environmental issues or concerns associated with the applicant's proposed accessory apartment."

Exhibit 14, p. 7. The site is exempt from the forest conservation law. Exhibit 7.

As observed by Technical Staff (Exhibit 14, p. 2), the subject home has no driveway and all parking must therefore be within the right-of-way on Westridge Road. Nevertheless, Staff found “there is adequate parking for the accessory apartment” on Westridge. Staff repeated this finding on page 9 of their report, “Parking for the accessory apartment will be sufficient. There is sufficient space along Westridge Road ensuring adequate neighborhood parking even with the existence of an additional household on the block.”

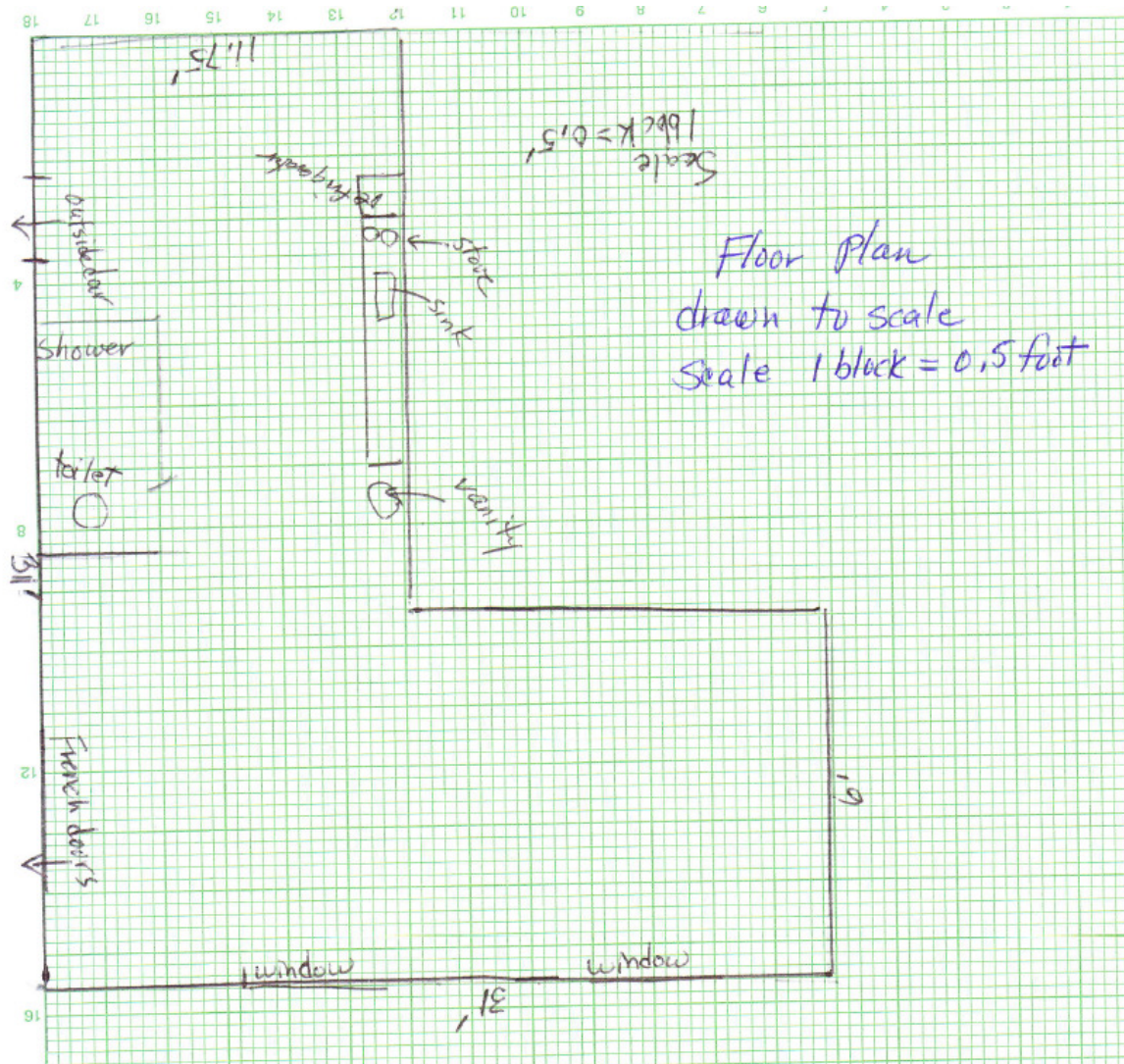
This finding is supported by the testimony of the Petitioner (Tr. 24-25) and Lynn McCreary, the Housing Code Inspector. Tr. 23-25. Ms. McCreary also noted in her report (Exhibit 12), that “Parking is available on the street in front of the house and on the cul-de-sac at the end of the street.” Based on this record, and on the absence of any contrary evidence, the Hearing Examiner finds that parking for the accessory apartment is sufficient even in the absence of off-street parking.

The overall net floor area of the apartment is approximately 408 square feet, and includes a bathroom, a kitchenette and a living area. The Department of Housing and Community Affairs (DHCA) inspected the property on February 6, 2012, and Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated February 7, 2012 (Exhibit 12). The substance of her report is set forth below:

The preliminary inspection was conducted on February 6, 2012. The Accessory Apartment is located in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. The total habitable space in the unit measures approximately 216 square feet. Based upon occupancy requirements only one person may occupy the unit.
2. A permanently installed stove that includes top burners and a convector oven must be provided. All applicable permits must be obtained and finalized for the proper installation of said stove
3. The double cylinder lock on the exterior door located in the bedroom must be removed.
4. Off-street parking is not available. Parking is available on the street in front of the house and on the cul-de-sac at the end of the street.

The Floor Plan for the proposed accessory apartment (Exhibit 5) and photos of the kitchenette (Exhibit 12(a)(13)) and living area (Exhibit 12(a)(20)) are shown below:



Ms. McCreary testified that she sees no reason why the accessory apartment cannot be used as planned. She confirmed that there is ample on-street parking available and said she saw no reason to deny the special exception. Tr. 23-25.

Technical Staff discussed the transportation issues at page 6 of their report (Exhibit 14), stating:

The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance. The existing one-family dwelling is estimated to generate one peak-hour trip during the weekday morning and evening peak-periods. The accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods. Since the number of peak hour trips, when combined, will generate fewer trips than the threshold figure requiring a traffic study (30 peak-hour trips), the proposed accessory apartment passes the Local Area Transportation Review (LATR). Policy Area Mobility Review (PAMR) is not required because the accessory apartment will generate less than four new peak-hour trips within the weekday morning and evening peak periods.

Vehicular access to the existing house and accessory apartment will be from Westridge Road where there is adequate parking for the accessory apartment. The special exception will not have an adverse effect on vehicular and pedestrian access or pedestrian safety. [Footnote Omitted.]

Given this evidence, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities and that the special exception will not have an adverse effect on vehicular and pedestrian access or safety.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause adverse effects on the neighborhood warranting denial of the petition.

C. Neighborhood Response

There has been no response from the community, either positive or negative, to the subject petition. There is no opposition in the case.

D. The Master Plan

The subject property lies within the area covered by the 1990 Bethesda - Chevy Chase

Master Plan. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 14, p. 6. However, the Master Plan does recommend special exception uses “that contribute to the housing objectives in the Master Plan” (p. 31, ¶ numbered 4). In fact, the Plan specifically “endorses expanding choices of housing types by provision of accessory apartments” (p. 33, ¶ numbered 4). Since the subject application furthers the Plan’s general guidance, Technical Staff found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. This accessory apartment would not be visible from the street and therefore would not change the existing structure’s appearance as a single-family dwelling compatible with the surrounding neighborhood.

Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the Bethesda - Chevy Chase Master Plan.

III. SUMMARY OF HEARING

At the hearing, testimony was heard from Petitioner Marilyn Raymond and from Housing Code Inspector Lynn McCreary. There was no community testimony. The record was held open following the hearing, as required by Board Rule 7.2.6, because of the late filing of the Technical Staff report, and to await the filing by Petitioner of a copy of the deed and a revised landscape and lighting plan.

Marilyn Raymond (Tr. 9-22; 24-25; 27-33):

Petitioner executed an affidavit of posting (Exhibit 16), and identified photos from the Staff report, as well as her own photographs. She also identified the submitted plans (Exhibits 3, 5 and 6). She adopted the findings in the Technical Staff Report (Exhibit 14) and in the Housing Code

Inspector's Report (Exhibit 12), as Petitioner's own evidence (Tr. 9-10). She also agreed to meet all the conditions set forth in both reports. Tr. 10.

Petitioner further testified that the only external changes to the site would be the landscaping currently being modified in the front of her house, which had nothing to do with the accessory apartment. Petitioner indicated that the lighting on the subject site is all residential in nature, and adequately lights the path to the accessory apartment.

Petitioner testified that although there is no off-street parking for her house, there is plenty of on-street parking available. She has only a single car, and her current tenant has none. Tr. 25.

Housing Code Inspector Lynn McCreary (Tr. 22-33):

Housing Code Inspector, Lynn McCreary, testified that she inspected the premises on February 6, 2012, and that her findings are set forth in her report of February 7, 2012 (Exhibit 12). Tr. 22-23. The inspector concluded that occupancy must be limited to one person, in habitable space of 216 square feet. She sees no reason why the accessory apartment cannot be approved.

Ms. McCreary confirmed that there is ample on-street parking available and said she saw no reason to deny the special exception. Tr. 23-25.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The Zoning Code establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements for a special exception, if she complies with the recommended conditions (Exhibit 14).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 14, pp. 8-9):

- (1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as a habitable space under the applicable code provisions;
- (3) a separate entrance and walkway and sufficient exterior lighting;
- (4) sufficient parking;
- (5) the existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found (Exhibit 14, p. 9):

In this case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

* * *

Parking for the accessory apartment will be sufficient. There is sufficient space along Westridge Road ensuring adequate neighborhood parking even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 14, p. 9):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no non-inherent adverse effects present in this case.

The Hearing Examiner disagrees with Technical Staff to some extent. He finds that the absence of any on-site (*i.e.*, off-street) parking is an unusual and non-inherent site condition; however, the

existence of a non-inherent site characteristic does not require denial of the petition. Rather, the Hearing Examiner must review the record to determine whether this non-inherent characteristic will produce sufficient adverse effects on the neighborhood to warrant denial. The undisputed evidence in the record of this case is that there is adequate on-street parking for both the owner and the accessory apartment tenant. (Occupancy will be limited to one person because of the size of the apartment. Exhibit 12.)

Based on this record and considering the size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes that neither the non-inherent parking situation, nor any other site or use characteristic, will have undue adverse effects on the neighborhood. Therefore, the petition should not be denied based on non-inherent characteristics of the site or the use.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special

exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the Bethesda-Chevy Chase Master Plan, approved and adopted in 1990. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 14, p. 6. However, the Master Plan does recommend special exception uses “that contribute to the housing objectives in the Master Plan” (p. 31, ¶ 4). In fact, the Plan specifically “endorses expanding choices of housing types by provision of accessory apartments” (p. 33, ¶ 4). An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. Technical Staff therefore found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require external changes. The site therefore will maintain its residential character. There will be sufficient on-street parking, as previously discussed. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are only two other existing special exceptions in the general neighborhood, and Technical Staff found that the proposed accessory apartment, if granted, will not result in an excessive concentration of similar uses. Exhibit 14, p. 17. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that “The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 14, p. 11. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 14, pp. 12-13), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) *does not require approval of a new preliminary plan of subdivision; and*
 - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must*

determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 14, p. 13. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that "the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of

traffic,” the Hearing Examiner so finds. Exhibit 14, p. 13.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 14), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
 - (i) The lot is 2 acres or more in size; and*
 - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the cellar of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The house was built in 1955. Exhibit 14, p. 14. It therefore meets the “5 years old” requirement.

(5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use will not violate any of the provisions of this subsection.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance will be separate from the main entrance and located in the rear of the home. As noted by Technical Staff, the apartment entrance will have the appearance of a typical basement entry to a one-family home. There will thus be no change to the home’s residential appearance.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: The only external changes planned by Petitioner are ongoing landscape improvements to the front yard, which have nothing to do with the accessory apartment. Tr. 13.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment, at 408 square feet (216 square feet of which is habitable space), is well under the maximum of 1200 square feet, and it will clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 1516 square feet. Exhibit 14, p. 3.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling unit on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: As discussed in footnote 3 on page 3 of this report, Petitioner purchased the subject site in 2001, as shown by the deed (Exhibit 18(a)). She legally transferred the property from herself, as an individual, back to herself as sole trustee of the Marilyn M. Raymond Family Trust on December 5, 2011 (Exhibit 17(a)). Given the nature of the second transfer, the Hearing Examiner finds that Petitioner, individually and as trustee, remains the owner of the property for purposes of this review, and she does not run afoul of the one-year ownership provision of Zoning Ordinance §59-G-2.00(b)(2). The Hearing Examiner believes that this provision was intended to prevent short-term owners from establishing accessory apartments, and this Petitioner

has owned the property for over ten years. This sort of transfer, which leaves Petitioner in total control of the property, should therefore not result in an impediment to granting a special exception. Moreover, Petitioner has executed a statement indicating that, as trustee, she consents to the special exception proceeding and will abide by the Board's conditions. Exhibit 22. Nevertheless, to ensure that both the Petitioner, as trustee, and the Petitioner as an individual, are bound by the conditions of the special exception, a condition to this effect is recommended in Part V of this report.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioner is the owner of the property, as she retains an equitable interest in the property, although it is now titled in her name as sole trustee of the Marilyn M. Raymond Family Trust.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot*

coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 7,775 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 14, p. 7. The following table from the Technical Staff report summarizes the relevant development standards for the application. Exhibit 14, p. 8.

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	1 story	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	7,775 sq. ft.	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	68 ft.	§ 59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	71 ft.	§ 59-C-1.322(b)
Minimum Setback from Street	25 ft.	26 ft.	§ 59-C-1.323(a)
Minimum Rear Yard Setback	20 ft.	65 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	35 percent	Approx. 19.5 percent	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	408 sq. ft.	§ 59-G-2.00(a)(9)

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed

special exception will not create an excessive concentration of similar uses since there are only two other special exceptions in the neighborhood.

- (3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) *More spaces are required to supplement on-street parking; or*
 - (ii) *Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B. of this report, there are no off-street spaces on Petitioner's property, but there is ample on-street parking. Technical Staff found that "Parking for the accessory apartment will be sufficient. There is sufficient space along Westridge Road ensuring adequate neighborhood parking even with the existence of an additional household on the block." Exhibit 14, p. 9. The Housing Code Inspector agreed. Tr. 23-25. The Hearing Examiner so finds.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 12) specifies certain conditions. Petitioner has agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 10.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Marilyn Raymond, BOA No. S-2826, which seeks a special exception for an accessory apartment located at 5115 Westridge Road, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by her testimony, representations and exhibits of record;
2. The Petitioner must comply with the conditions set forth in the Memorandum of Lynn

McCreary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 12):

- a. The total habitable space in the unit measures approximately 216 square feet. Based upon occupancy requirements only one person may occupy the unit.
 - b. A permanently installed stove that includes top burners and a convector oven must be provided. All applicable permits must be obtained and finalized for the proper installation of said stove
 - c. The double cylinder lock on the exterior door located in the bedroom must be removed.
3. Based on the record, the Board finds that there is adequate on-street parking to permit the subject accessory apartment in the absence of any off-street spaces, in accordance with Zoning Ordinance §59-G-2.00(c)(3)(ii);
 4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
 5. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;
 6. Both the Petitioner, as trustee of the Marilyn M. Raymond Family Trust, and the Petitioner as an individual, are bound by the conditions of this special exception; and
 7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 26, 2012

Respectfully submitted,



Martin L. Grossman, Hearing Examiner